

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re:

JAMES S. PENDERGRAFT, IV,

Case No. 6:18-bk-06437-KSJ
Chapter 7

Debtor.

**TRUSTEE'S MOTION TO COMPEL COMPLIANCE WITH
THE COURT'S AGREED ORDER GRANTING TRUSTEE'S REPORT AND
NOTICE OF INTENTION TO SELL PROPERTY OF THE ESTATE (DOC. 123)**

Arvind Mahendru, Chapter 7 Trustee ("Trustee") in the Bankruptcy for James S. Pendergraft, IV ("Pendergraft" or "Debtor"), by and through his undersigned counsel, and pursuant to 28 U.S.C. § 105(a), 11 U.S.C. §§ 521, 541, 542 and Bankruptcy Rule 4002, hereby files this motion to compel Debtor to comply with this Court's *Agreed Order Granting Trustee's Report and Notice of Intention to Sell Property of the Estate* (Doc. 123; the "Order"), and in support states as follows:

1. On May 31, 2019, the Trustee filed a Report and Notice of Intent to Sell Property of the Estate (Doc. No. 103; the "Notice").
2. On July 16, 2019, The Court entered its Agreed Order Granting Trustee's Report and Notice of Intention to Sell Property of the Estate (Doc. No. 123). which required the Debtor to remit \$20,000 within fifteen (15) days from the date of entry of the Order. The fifteen (15) day period expired on July 31, 2019.
3. By the Debtor's failure to turn over the requested \$20,000 pursuant to the Court's Order, the Trustee has been unable to fulfill his duties as Trustee in accordance with 11 U.S.C. § 704.

MEMORANDUM OF LAW

4. Section 521(a)(3) requires the Debtor to “...cooperate with the Trustee as necessary to enable the Trustee to perform the Trustee’s duties under this title.”

5. Section 727(a)(6)(A) provides that the Court shall grant a debtor a discharge, unless "the debtor has refused, in the case to obey any lawful order of the court . . .". 11 U.S.C. § 727(a)(6)(A).

6. Pursuant to § 105(a), the bankruptcy court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title” and may take any action or make any determination necessary or appropriate “to prevent an abuse of process.”

7. Pursuant to § 105(a), the bankruptcy court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title” and may take any action or make any determination necessary or appropriate “to prevent an abuse of process.”

8. To date, the Debtor has failed to comply with the Order.

WHEREFORE, the Trustee requests that Court enter an Order (i) compelling Debtor’s compliance with paragraph 2 of the Order and turn over \$20,000 immediately; (ii) if the funds are not turned over immediately, denying the Debtor a discharge in this case (iii) finding the Debtor in contempt of Court for failure to comply with this Court’s order; (iv) awarding sanctions; (v) and for such other and further relief the Court deems necessary.

GOOD FAITH CERTIFICATION

The Trustee, through his attorney, hereby certifies that he, as Movant, has attempted to contact counsel for the Debtor in good faith in an effort to secure the information or material sought without court action.

Dated this 23rd day of August 2019

Respectfully submitted,

Michael A. Nardella
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Counsel for Arvind Mahendru
as Chapter 7 Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via electronic mail using the Court's CM/ECF system on August 23, 2019. I further certify that pursuant to the Order Granting Motion to Allow Debtor's Counsel to Accept Service (DOC. 62) on Behalf of the Debtor the foregoing will be furnished by U.S. Mail postage prepaid to:

James S. Pendergraft, IV
c/o Justin R. Clark, Esq.
Justin Clark & Associates, PLLC
500 Winderley Place, Unit 100
Maitland, FL 32751

Michael A. Nardella
Michael A. Nardella, Esq.